

AMENDED IN SENATE MARCH 21, 2011

SENATE BILL

No. 820

Introduced by Senator Walters

(Coauthors: Senators Dutton and Runner)

(Coauthors: Assembly Members Garrick, Grove, Harkey, Jeffries, and Mansoor)

February 18, 2011

~~An act to amend Section 50003 of the Financial Code, relating to residential mortgages.~~ *An act to amend Section 20229 of the Government Code, relating to public employees' retirement.*

LEGISLATIVE COUNSEL'S DIGEST

SB 820, as amended, Walters. ~~Residential mortgage lending.~~ *Public employees' retirement: state employer contribution rates: reports.*

The Public Employees' Retirement Law (PERL) provides a defined benefit to members of the Public Employees' Retirement System based on age at retirement, service credit, and final compensation, as those terms are defined. The management and control of PERL is vested in the board of administration of PERL, including the calculation of the contribution rates for public employers.

Existing law requires the board, any time it adopts or forecasts the contribution rates, to submit a report to the Legislature, the Governor, and the Treasurer describing the investment return assumptions, discount rates, and amortization periods utilized by the board in the calculation of the contribution rates for all public employees and employers. Existing law also requires that this report include recalculations of those rates based on specified adjustments of the investment return assumptions, amortization periods, and discount rates utilized by the board, and specifically requires the board to calculate

the liabilities of the fund using a discount rate equal to the rate of the 10-year United States Treasury Bond. Existing law requires the Treasurer, within 30 days following receipt of the report, to provide each house of the Legislature, at a publicly noticed floor session, with an explanation of the role played by the investment return assumption and amortization period in the calculation of the contribution rates and the consequences for future state budgets if the investment return assumptions are not realized, to report whether the board's amortization period exceeds the estimated average remaining service periods of employees covered by the contributions, and to express his or her opinion of the reasonableness of the board's calculation of the contribution rates.

This bill would instead require an annual report and would limit the scope of this report to include only contribution rates for the state employer. The bill would delete the reference to the 10-year United States Treasury Bond, and would instead require the board to include a calculation of the liabilities of the fund using discount rates equal to (1) the average rate of investment return since the establishment of the fund, and (2) the average rate of investment return since January 1, 1984. The bill would require the Treasurer, within 30 days of receipt of the report, to present the above-described information to a publicly noticed, joint meeting of the budget and retirement committees of both houses of the Legislature.

~~Existing law, the California Residential Mortgage Lending Act, provides for the licensure and regulation of residential mortgaging lending and serving. Existing law provides that a person shall not be deemed to control a licensee solely by reason of his or her status as an officer or a director of the licensee.~~

~~This bill would make a nonsubstantive change to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 20229 of the Government Code is
- 2 amended to read:
- 3 20229. (a) The board, notwithstanding Section 10231.5, ~~any~~
- 4 ~~time it adopts the contribution rates described in Chapter 8~~
- 5 ~~(commencing with Section 20671) and Chapter 9 (commencing~~
- 6 ~~with Section 20790), shall annually provide the Legislature, the~~

1 Governor, and the Treasurer with a report that includes all of the
2 following:

3 (1) (A) A description of the investment return assumption
4 utilized by the board when determining the *state employer*
5 contribution rates *described in Chapter 9 (commencing with Section*
6 *20790)*.

7 (B) A calculation of ~~the~~ *those* contribution rates utilizing an
8 investment return assumption based on the lesser of 6 percent per
9 annum or one percentage point below the investment return
10 assumption utilized by the board.

11 (2) (A) A description of the amortization period for any
12 unfunded liabilities utilized by the board when determining ~~the~~
13 *those* contribution rates.

14 (B) A calculation of ~~the~~ *those* contribution rates based on an
15 amortization period equal to the estimated average remaining
16 service periods of employees covered by the contributions.

17 (3) (A) A description of the discount rate utilized by the board
18 for reporting liabilities.

19 (B) A calculation of those liabilities based upon a discount rate
20 equal to ~~the rate of the 10-year United States Treasury Note as of~~
21 ~~30 days before the date of the report~~ *average rate of investment*
22 *return since the establishment of the fund.*

23 (C) *A calculation of those liabilities based on a discount rate*
24 *equal to an average rate of investment return since January 1,*
25 *1984.*

26 (4) The market value of the assets controlled by the board and
27 an explanation of how the actuarial value assigned to those assets
28 differs from the market value of those assets.

29 ~~(b) The board, notwithstanding Section 10231.5, at any time it~~
30 ~~forecasts the contribution rates described in Chapter 8~~
31 ~~(commencing with Section 20671) and Chapter 9 (commencing~~
32 ~~with Section 20790), shall provide the Legislature with a revised~~
33 ~~calculation of the forecasted contribution rates utilizing an~~
34 ~~investment rate assumption based on the lesser of 6 percent or one~~
35 ~~percentage point below the investment return assumption utilized~~
36 ~~by the board in the calculation of the forecasted contribution rates.~~

37 (e)

38 (b) The Treasurer, within 30 days of receipt of the report
39 required by subdivision (a), shall, during a publicly noticed ~~floor~~
40 ~~session of each house of the Legislature~~ *joint meeting of the*

1 *Assembly Committee on Budget, Assembly Committee on Public*
2 *Employees, Retirement and Social Security, Senate Committee on*
3 *Budget and Fiscal Review, and Senate Committee on Public*
4 *Employment and Retirement, do all of the following:*

5 (1) Explain the role played by the investment return assumption
6 and amortization period in the calculation of the *state employer*
7 contribution rates.

8 (2) Describe the consequences for future state budgets should
9 the investment return assumption not be realized.

10 (3) Report whether the board's amortization period exceeds the
11 estimated average remaining service periods of employees covered
12 by the contributions.

13 (4) Express his or her opinion of the reasonableness of the
14 board's selection of the investment return assumption and the
15 amortization period.

16 (d)

17 (c) The reports required by subdivisions (a) and (b) shall be
18 submitted in compliance with Section 9795.

19 ~~SECTION 1. Section 50003 of the Financial Code is amended~~
20 ~~to read:~~

21 ~~50003. (a) "Annual audit" means a certified audit of the~~
22 ~~licensee's books, records, and systems of internal control performed~~
23 ~~by an independent certified public accountant in accordance with~~
24 ~~generally accepted accounting principles and generally accepted~~
25 ~~auditing standards.~~

26 (b) ~~"Borrower" means the loan applicant.~~

27 (c) ~~"Buy" includes exchange, offer to buy, or solicitation to~~
28 ~~buy.~~

29 (d) ~~"Commissioner" means the Commissioner of Corporations.~~

30 (e) ~~"Control" means the possession, directly or indirectly, of~~
31 ~~the power to direct, or cause the direction of, the management and~~
32 ~~policies of a licensee under this division, whether through voting~~
33 ~~or through the ownership of voting power of an entity that~~
34 ~~possesses voting power of the licensee, or otherwise. Control is~~
35 ~~presumed to exist if a person, directly or indirectly, owns, controls,~~
36 ~~or holds 10 percent or more of the voting power of a licensee or~~
37 ~~of an entity that owns, controls, or holds, with power to vote, 10~~
38 ~~percent or more of the voting power of a licensee. No person shall~~
39 ~~be deemed to control a licensee solely by reason of his or her status~~
40 ~~as an officer or a director of the licensee.~~

1 (f) “Depository institution” has the same meaning as in Section
2 3 of the Federal Deposit Insurance Act, and includes any credit
3 union.

4 (g) “Engage in the business” means the dissemination to the
5 public, or any part of the public, by means of written, printed, or
6 electronic communication or any communication by means of
7 recorded telephone messages or spoken on radio, television, or
8 similar communications media, of any information relating to the
9 making of residential mortgage loans, the servicing of residential
10 mortgage loans, or both. “Engage in the business” also means,
11 without limitation, making residential mortgage loans or servicing
12 residential mortgage loans, or both.

13 (h) “Federal banking agencies” means the Board of Governors
14 of the Federal Reserve System, the Comptroller of the Currency,
15 the Director of the Office of Thrift Supervision, the National Credit
16 Union Administration, and the Federal Deposit Insurance
17 Corporation.

18 (i) “In this state” includes any activity of a person relating to
19 making or servicing a residential mortgage loan that originates
20 from this state and is directed to persons outside this state, or that
21 originates from outside this state and is directed to persons inside
22 this state, or that originates inside this state and is directed to
23 persons inside this state, or that leads to the formation of a contract
24 and the offer or acceptance thereof is directed to a person in this
25 state (whether from inside or outside this state and whether the
26 offer was made inside or outside the state).

27 (j) “Institutional investor” means the following:

28 (1) The United States or any state, district, territory, or
29 commonwealth thereof, or any city, county, city and county, public
30 district, public authority, public corporation, public entity, or
31 political subdivision of a state, district, territory, or commonwealth
32 of the United States, or any agency or other instrumentality of any
33 one or more of the foregoing, including, by way of example, the
34 Federal National Mortgage Association and the Federal Home
35 Loan Mortgage Corporation.

36 (2) Any bank, trust company, savings bank or savings and loan
37 association, credit union, industrial bank or industrial loan
38 company, personal property broker, consumer finance lender,
39 commercial finance lender, or insurance company, or subsidiary
40 or affiliate of one of the preceding entities, doing business under

1 the authority of or in accordance with a license, certificate, or
2 charter issued by the United States or any state, district, territory,
3 or commonwealth of the United States.

4 (3) Trustees of pension, profit-sharing, or welfare funds, if the
5 pension, profit-sharing, or welfare fund has a net worth of not less
6 than fifteen million dollars (\$15,000,000), except pension,
7 profit-sharing, or welfare funds of a licensee or its affiliate,
8 self-employed individual retirement plans, or individual retirement
9 accounts.

10 (4) A corporation or other entity with outstanding securities
11 registered under Section 12 of the federal Securities Exchange Act
12 of 1934 or a wholly owned subsidiary of that corporation or entity,
13 provided that the purchaser represents either of the following:

14 (A) That it is purchasing for its own account for investment and
15 not with a view to, or for sale in connection with, any distribution
16 of a promissory note.

17 (B) That it is purchasing for resale pursuant to an exemption
18 under Rule 144A (17 C.F.R. 230.144A) of the Securities and
19 Exchange Commission.

20 (5) An investment company registered under the Investment
21 Company Act of 1940; or a wholly owned and controlled subsidiary
22 of that company, provided that the purchaser makes either of the
23 representations provided in paragraph (4).

24 (6) A residential mortgage lender or servicer licensed to make
25 residential mortgage loans under this law or an affiliate or
26 subsidiary of that person.

27 (7) Any person who is licensed as a securities broker or
28 securities dealer under any law of this state, or of the United States,
29 or any employee, officer or agent of that person, if that person is
30 acting within the scope of authority granted by that license or an
31 affiliate or subsidiary controlled by that broker or dealer, in
32 connection with a transaction involving the offer, sale, purchase,
33 or exchange of one or more promissory notes secured directly or
34 indirectly by liens on real property or a security representing an
35 ownership interest in a pool of promissory notes secured directly
36 or indirectly by liens on real property, and the offer and sale of
37 those securities is qualified under the California Corporate
38 Securities Law of 1968 or registered under federal securities laws,
39 or exempt from qualification or registration.

1 ~~(8) A licensed real estate broker selling the loan to an~~
2 ~~institutional investor specified in paragraphs (1) to (7), inclusive;~~
3 ~~or paragraph (9) or (10).~~

4 ~~(9) A business development company as defined in Section~~
5 ~~2(a)(48) of the Investment Company Act of 1940 or a Small~~
6 ~~Business Investment Company licensed by the United States Small~~
7 ~~Business Administration under Section 301(c) or (d) of the Small~~
8 ~~Business Investment Act of 1958.~~

9 ~~(10) A syndication or other combination of any of the foregoing~~
10 ~~entities that is organized to purchase a promissory note.~~

11 ~~(11) A trust or other business entity established by an~~
12 ~~institutional investor for the purpose of issuing or facilitating the~~
13 ~~issuance of securities representing undivided interests in, or rights~~
14 ~~to receive payments from or to receive payments primarily from;~~
15 ~~a pool of financial assets held by the trust or business entity;~~
16 ~~provided that all of the following apply:~~

17 ~~(A) The business entity is not a sole proprietorship.~~

18 ~~(B) The pool of assets consists of one or more of the following:~~

19 ~~(i) Interest-bearing obligations.~~

20 ~~(ii) Other contractual obligations representing the right to receive~~
21 ~~payments from the assets.~~

22 ~~(iii) Surety bonds, insurance policies, letters of credit, or other~~
23 ~~instruments providing credit enhancement for the assets.~~

24 ~~(C) The securities will be either one of the following:~~

25 ~~(i) Rated as “investment grade” by Standard and Poor’s~~
26 ~~Corporation or Moody’s Investors Service, Inc. “Investment grade”~~
27 ~~means that the securities will be rated by Standard and Poor’s~~
28 ~~Corporation as AAA, AA, A, or BBB or by Moody’s Investors~~
29 ~~Service, Inc. as Aaa, Aa, A, or Baa, including any of those ratings~~
30 ~~with “+” or “-” designation or other variations that occur within~~
31 ~~those ratings.~~

32 ~~(ii) Sold to an institutional investor.~~

33 ~~(D) The offer and sale of the securities is qualified under the~~
34 ~~California Corporate Securities Law of 1968 or registered under~~
35 ~~federal securities laws, or exempt from qualification or registration.~~

36 ~~(k) “Institutional lender” means the following:~~

37 ~~(1) The United States or any state, district, territory, or~~
38 ~~commonwealth thereof, or any city, county, city and county, public~~
39 ~~district, public authority, public corporation, public entity, or~~
40 ~~political subdivision of a state, district, territory, or commonwealth~~

1 of the United States, or any agency or other instrumentality of any
2 one or more of the foregoing, including, by way of example, the
3 Federal National Mortgage Association and the Federal Home
4 Loan Mortgage Corporation.

5 (2) Any bank, trust company, savings bank or savings and loan
6 association, credit union, industrial loan company, or insurance
7 company, or service or investment company that is wholly owned
8 and controlled by one of the preceding entities, doing business
9 under the authority of and in accordance with a license, certificate,
10 or charter issued by the United States or any state, district, territory,
11 or commonwealth of the United States.

12 (3) Any corporation with outstanding securities registered under
13 Section 12 of the Securities Exchange Act of 1934 or any wholly
14 owned subsidiary of that corporation.

15 (4) A residential mortgage lender or servicer licensed to make
16 residential mortgage loans under this law.

17 (l) “Law” means the California Residential Mortgage Lending
18 Act.

19 (m) “Lender” means a person that (1) is an approved lender for
20 the Federal Housing Administration, Veterans Administration,
21 Farmers Home Administration, Government National Mortgage
22 Association, Federal National Mortgage Association, or Federal
23 Home Loan Mortgage Corporation, (2) directly makes residential
24 mortgage loans, and (3) makes the credit decision in the loan
25 transactions.

26 (n) “Licensee” means, depending on the context, a person
27 licensed under Chapter 2 (commencing with Section 50120),
28 Chapter 3 (commencing with Section 50130), or Chapter 3.5
29 (commencing with Section 50140).

30 (o) “Makes or making residential mortgage loans” or “mortgage
31 lending” means processing, underwriting, or as a lender using or
32 advancing one’s own funds, or making a commitment to advance
33 one’s own funds, to a loan applicant for a residential mortgage
34 loan.

35 (p) “Mortgage loan,” “residential mortgage loan,” or “home
36 mortgage loan” means a federally related mortgage loan as defined
37 in Section 3500.2 of Title 24 of the Code of Federal Regulations,
38 or a loan made to finance construction of a one-to-four family
39 dwelling.

1 (q) ~~“Mortgage servicer” or “residential mortgage loan servicer”~~
2 ~~means a person that (1) is an approved servicer for the Federal~~
3 ~~Housing Administration, Veterans Administration, Farmers Home~~
4 ~~Administration, Government National Mortgage Association,~~
5 ~~Federal National Mortgage Association, or Federal Home Loan~~
6 ~~Mortgage Corporation, and (2) directly services or offers to service~~
7 ~~mortgage loans.~~

8 (r) ~~“Nationwide Mortgage Licensing System and Registry”~~
9 ~~means a mortgage licensing system developed and maintained by~~
10 ~~the Conference of State Bank Supervisors and the American~~
11 ~~Association of Residential Mortgage Regulators for the licensing~~
12 ~~and registration of licensed mortgage loan originators.~~

13 (s) ~~“Net worth” has the meaning set forth in Section 50201.~~

14 (t) ~~“Own funds” means (1) cash, corporate capital, or warehouse~~
15 ~~credit lines at commercial banks, savings banks, savings and loan~~
16 ~~associations, industrial loan companies, or other sources that are~~
17 ~~liability items on a lender’s financial statements, whether secured~~
18 ~~or unsecured, or (2) a lender’s affiliate’s cash, corporate capital,~~
19 ~~or warehouse credit lines at commercial banks or other sources~~
20 ~~that are liability items on the affiliate’s financial statements,~~
21 ~~whether secured or unsecured. “Own funds” does not include funds~~
22 ~~provided by a third party to fund a loan on condition that the third~~
23 ~~party will subsequently purchase or accept an assignment of that~~
24 ~~loan.~~

25 (u) ~~“Person” means a natural person, a sole proprietorship, a~~
26 ~~corporation, a partnership, a limited liability company, an~~
27 ~~association, a trust, a joint venture, an unincorporated organization,~~
28 ~~a joint stock company, a government or a political subdivision of~~
29 ~~a government, and any other entity.~~

30 (v) ~~“Residential real property” or “residential real estate” means~~
31 ~~real property located in this state that is improved by a one-to-four~~
32 ~~family dwelling.~~

33 (w) ~~“SAFE Act” means the federal Secure and Fair Enforcement~~
34 ~~for Mortgage Licensing Act of 2008 (Public Law 110-289).~~

35 (x) ~~“Service” or “servicing” means receiving more than three~~
36 ~~installment payments of principal, interest, or other amounts placed~~
37 ~~in escrow, pursuant to the terms of a mortgage loan and performing~~
38 ~~services by a licensee relating to that receipt or the enforcement~~
39 ~~of its receipt, on behalf of the holder of the note evidencing that~~
40 ~~loan.~~

- 1 (y) ~~“Sell” includes exchange, offer to sell, or solicitation to sell.~~
2 (z) ~~“Unique identifier” means a number or other identifier~~
3 ~~assigned by protocols established by the Nationwide Mortgage~~
4 ~~Licensing System and Registry.~~
5 (aa) ~~For purposes of Sections 50142, 50143, and 50145,~~
6 ~~“nontraditional mortgage product” means any mortgage product~~
7 ~~other than a 30-year fixed-rate mortgage.~~

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